

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Federal Highway Administration

#### 23 CFR Part 1225

[Docket No. NHTSA-2002-13680]

RIN 2127-AI44

#### Operation of Motor Vehicles by Intoxicated Persons

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** This document proposes to implement a new program enacted by the Department of Transportation and Related Agencies Appropriations Act, 2001 (DOT Appropriations Act of FY 2001), which requires the withholding of Federal-aid highway funds, beginning in fiscal year (FY) 2004, from any State that has not enacted and is not enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This document solicits comments on a proposed regulation to clarify what States must do to avoid the withholding of funds.

**DATES:** Comments must be received on or before April 7, 2003.

**ADDRESSES:** Submit written comments to the Docket Management Facility, DOT, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590.

Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov/submit>. Click on "Help & Information" or "Help/Info" to view instructions for

filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Ms. Marlene Markison, Office of Injury Control Operations & Resources, NTI-200, telephone (202) 366-2121, fax (202) 366-7394; Ms. Heidi Coleman, Office of Chief Counsel, NCC-113, telephone (202) 366-1834, fax (202) 366-3820; or Ms. Tyler Bolden, Office of Chief Counsel, NCC-113, telephone (202) 366-1834, fax (202) 366-3820.

In FHWA: Mr. Randy Umbs, Office of Safety, HSA-1, telephone (202) 366-2177, fax (202) 366-3222; or Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC-30, telephone (202) 366-0791, fax (202) 366-7499.

**SUPPLEMENTARY INFORMATION:** The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. See Public Law 106-346—Appendix, sec. 351, 114 Stat. 1356A-34, 35. Section 351 of Public Law 106-346—Appendix (Section 351) provides that, beginning in FY 2004, the Secretary of Transportation shall withhold certain Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law as described in 23 U.S.C. 163(a) (Section 163). Section 163 provides that 0.08 BAC laws must specify that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

#### Background

##### *The Problem of Impaired Driving*

In the year 2000, the number of people who were killed in motor vehicle crashes reached 41,821. Alcohol use was linked to 16,653 of these crashes, an average of 1 alcohol-related fatality every 32 minutes. Although only about 8 percent of all motor vehicle crashes involve the use of alcohol, 40 percent of fatal crashes involve alcohol use.

Injuries caused by motor vehicle crashes are the leading cause of death for people aged 4 to 33. Each year, these injuries cost Americans an estimated \$150 billion, including \$19 billion in medical and emergency expenses, \$42 billion in lost productivity, \$52 billion in property damage, and \$37 billion in

other crash related costs. Alcohol-related crashes account for roughly 30 percent of these costs—more than \$45 billion each year.

While alcohol-related fatalities have dropped significantly, from 22,084 in 1990 to 16,653 in 2000, a 25 percent decrease in ten years, alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries. The 25 percent decrease in alcohol-related fatalities can be attributed to more effective laws, strong enforcement and highly visible public information and education. Four laws that have been proven effective in the fight against impaired driving are: illegal *per se* laws; administrative license revocation (ALR) laws; "zero tolerance" laws and 0.08 BAC laws. Both individually and collectively, these laws have played a crucial role in reducing the number of alcohol-related fatalities in this country. Indeed, it has been estimated that, if every State adopted a 0.08 BAC law, approximately 590 lives could be saved each year.

##### *Support for 0.08 BAC Laws*

As we stated in the final rule for the Section 163 Incentive Grant program (64 FR 35568, July 1, 1999), a number of studies sponsored by NHTSA support a legal limit of 0.08 BAC, copies of which have been placed in the docket. For example, the effect of California's 0.08 law was analyzed in a 1991 NHTSA study entitled "The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California." The study found that 81 percent of the driving population knew that the BAC limit had become stricter (as the result of a successful public education effort). The State experienced a 12 percent reduction in alcohol-related fatalities, although some of the reduction may have resulted from a new ALR law that was enacted during the same year that the BAC standard was lowered. The State also experienced an increase in the number of impaired driving arrests.

Another study, "Lowering State Legal Blood Alcohol Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes," reported in the September 1996 issue of the "American Journal of Public Health," analyzed the effect of lowering BAC levels to 0.08 in multiple states. The study, conducted by Boston University's School of Public Health,

compared the first five States to lower their BAC limit to 0.08 (California, Maine, Oregon, Utah and Vermont) with five nearby States that retained the 0.10 BAC limit. The results of this study suggested that 0.08 BAC laws, particularly in combination with ALR laws, reduced the proportion of fatal crashes involving drivers and fatally injured drivers at blood alcohol levels of 0.08 percent and higher by 16 percent and those at a BAC of 0.15 percent and greater by 18 percent.

The immediate significance of these findings is that, the 0.08 BAC laws, particularly in combination with ALR laws, not only reduced the overall incidence of alcohol fatalities, but they also reduced fatalities at the *higher* BAC levels. The effect on the number of extremely impaired drivers was even greater than the overall effect. The study concluded that if all States lowered their BAC limits to 0.08, alcohol-related fatalities would decrease nationwide by 500–600 per year, which would result in an economic cost savings of approximately \$1.5 billion.

More recently, additional studies have been conducted to determine the effectiveness of 0.08 BAC laws. For example, in August 1999, NHTSA sponsored a study conducted by the Pacific Institute for Research and Evaluation, entitled “The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes,” which analyzed the relationships between the passage of key alcohol safety laws and the number of drinking drivers in fatal crashes. Specifically, the study evaluated the extent to which the reduction in alcohol-related fatalities could be attributed to ALR laws, 0.10 BAC laws and/or 0.08 BAC laws. Study results indicated that all three laws were associated with significant reductions in fatal crashes involving drinking drivers. In particular, 0.08 BAC laws were associated with 8 percent reductions in the involvement of both high BAC and lower BAC drivers in fatal crashes. The study concluded that if all 50 States had 0.08 BAC laws in 1997, 590 lives could have been saved.

Also, Illinois’ 0.08 BAC law, which was enacted in July 1997, was analyzed in a NHTSA-sponsored study conducted by the Pacific Institute for Research and Evaluation in December 2000. This study, entitled “The Effectiveness of the Illinois .08 Law,” found that after enactment of the 0.08 BAC law, the number of DUI arrests of offenders in the new 0.08 to 0.09 range increased statewide, while the average BAC of arrested drivers declined. In addition, the proportion of offenders with BACs higher than 0.15 decreased, and the

proportion of offenders in the 0.10 to 0.14 range increased slightly. Moreover, the State experienced an overall reduction of 13.7 percent in the proportion of alcohol-related fatalities, whereas surrounding States without a 0.08 BAC law showed no similar decline. Illinois also experienced an increase, by almost 11 percent, in the number of total impaired driving arrests, and it was estimated that the 0.08 law may have saved 47 lives in 1998 alone. However, only 18 months of data were available for the report, so the above-mentioned reductions are limited somewhat by the relatively short period of post-0.08 law data available and the possible effects of other legislation implemented at the same time as the 0.08 law.

An update to the Illinois study was published in December 2001. The update, entitled “Evaluation of the Illinois .08 Law: An Update with the 1999 FARS Data,” concluded that Illinois’ 0.08 law reduced the percentage of drinking drivers involved in fatal crashes by 13.65%. In addition, it was estimated that during a two-year period (1998 and 1999), the 0.08 law had saved approximately 105 lives.

Another recent study sponsored by NHTSA, entitled “Relative Risk of Fatal Crash Involvement by BAC, Age, and Gender,” provides further support for a 0.08 BAC limit. The study reported that the relative risk of involvement in a fatal passenger vehicle crash increased with higher driver BAC levels in every age and sex group, among both fatally injured and surviving drivers. Even a BAC increase of 0.02 percentage points among 16–20 year old male drivers was estimated to more than double the relative risk of a fatal single-vehicle crash injury. In addition, at the midpoint of the 0.08 to 0.10 BAC range, the relative risk of a fatal-single vehicle crash injury varied between 11.4 percent for drivers 35 and older to 51.9 percent for male drivers aged 16–20. The study concluded that drivers at non-zero BACs somewhat lower than 0.10 percent pose substantially elevated risks to themselves and to other road users.

In addition, the results of a study, entitled “A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills,” were published by NHTSA in 2000. The study indicated that alcohol impairs some driving skills, beginning with any significant departure from zero BAC. Moreover, significant impairment was reported at 0.05 BAC, and by 0.08 BAC, more than 94 percent of the reviewed studies showed impairment in measurable skills. The study concluded that all

drivers can be expected to experience impairment in some driving-related skills by 0.08 BAC or less.

Also in 2000, NHTSA published a study conducted by the Southern California Research Institute, entitled “Driver Characteristics and Impairment at Various BACs.” The study reported that there is evidence of significant alcohol-related impairment throughout the range from 0.02 to 0.10 BAC. In addition, the study found that the percentage of people exhibiting impairment and the magnitude of that impairment grows as BAC levels increase. The study concluded that a majority of the driving population is impaired in some important measures at BACs as low as 0.02 BAC.

#### *TEA–21, Section 163 Incentive Grant Program*

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was signed into law. Section 1404 of the Act established a \$500 million incentive grant program under 23 U.S.C. 163 to encourage States to adopt tough 0.08 BAC laws. Section 163 provides that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

On September 3, 1998, NHTSA and the FHWA (the agencies) published a joint interim rule, establishing the criteria that States must meet and the procedures they must follow to qualify for an incentive grant. See 63 FR 46881. On July 1, 1999, the agencies published a final rule, implementing the Section 163 incentive grant program. See 64 FR 35568.

#### *Effects of Section 163 Incentive Grant Program*

Before the Section 163 program was implemented, only 16 States had enacted laws that established 0.08 BAC as their legal *per se* limit. Fifteen of these States had laws already in effect, so they were eligible to receive Section 163 incentive grant funds in FY 1998. One State, Washington, enacted a 0.08 BAC law on March 30, 1998, but the law did not become effective until January 1, 1999. Thus, Washington was not eligible to receive Section 163 incentive grant funds until FY 1999. Between June 1998 and October 2000, only two additional States (Washington and Texas) and the District of Columbia enacted and began enforcing 0.08 BAC laws that met all of the Section 163 criteria. Although both

Kentucky and the Commonwealth of Puerto Rico enacted 0.08 BAC laws in 2000, these laws did not become effective until October 1, 2000 and January 10, 2001 respectively. Thus, Kentucky and Puerto Rico were not eligible for Section 163 incentive grant funds until FY 2001. Rhode Island also adopted a 0.08 BAC law in 2000, but its 0.08 BAC law does not conform to all of the requirements of Section 163 and Rhode Island is not eligible to receive an incentive grant. See Table 1.

*DOT Appropriations Act for FY 2001—Sanction Program*

In an effort to further reduce drunk driving injuries and fatalities, Congress created a new 0.08 BAC program in the DOT Appropriations Act of FY 2001. See Public Law 106-346—Appendix, sec. 351, 114 Stat. 1356A-34, 35. Section 351 of Public Law 106-346—Appendix (Section 351) provides for the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law by the beginning of FY 2004. This legislation did not alter the incentive grant program, which was established in TEA-21 and will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, fifteen additional States (Alaska, Arizona, Arkansas, Connecticut, Georgia, Indiana, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota, Tennessee and Wyoming) have enacted conforming 0.08 BAC laws. By October 2002, thirty-three States, the District of Columbia and the Commonwealth of Puerto Rico had established 0.08 BAC laws that met all of the requirements of Section 163. See Table 1.

Although, Louisiana enacted a 0.08 BAC law in June 2001, this 0.08 BAC law will not become effective until September 30, 2003. Thus, Louisiana will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004. Similarly, Tennessee enacted a 0.08 BAC law in June 2002, however, this law will not become effective until July 1, 2003. Thus, Tennessee will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004.

TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA (AS OF OCTOBER 2002)

State	Enactment Date	Effective Date
Alabama .....	07/31/95	10/01/95
Alaska .....	07/03/01	09/01/01
Arizona .....	04/11/01	08/31/01
Arkansas .....	03/06/01	08/13/01
California .....	1989	01/01/90
Connecticut .....	07/01/02	07/01/02
District of Columbia ..	12/01/98	04/13/99
Florida .....	04/27/93	01/01/94
Georgia .....	04/16/01	07/01/01
Hawaii .....	06/30/95	06/30/95
Idaho .....	03/17/97	07/01/97
Illinois .....	07/02/97	07/02/97
Indiana .....	05/09/01	07/01/01
Kansas .....	04/22/93	07/01/93
Kentucky .....	04/21/00	10/01/00
Louisiana .....	06/26/01	09/30/03
Maine .....	04/28/88	08/04/88
Maryland .....	04/10/01	09/30/01
Mississippi .....	03/11/02	07/01/02
Missouri .....	06/12/01	09/29/01
Nebraska .....	03/01/01	09/01/01
New Hampshire .....	04/15/93	01/01/94
New Mexico .....	03/19/93	01/01/94
North Carolina .....	07/05/93	10/01/93
Oklahoma .....	06/08/01	07/01/01
Oregon .....	08/04/83	10/15/83
Puerto Rico .....	01/10/00	01/10/01
South Dakota .....	02/27/02	07/01/02
Tennessee .....	06/27/02	07/01/03
Texas .....	05/28/99	09/01/99
Utah .....	03/19/83	08/01/83
Vermont .....	06/06/91	07/01/91
Virginia .....	04/06/94	07/01/94
Washington .....	03/30/98	01/01/99
Wyoming .....	03/11/02	07/01/02
Total: 33 States, plus the District of Columbia and Puerto Rico		

*Adoption of 0.08 BAC Law*

Section 351 provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements. To avoid such withholding, a State must enact and enforce a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

Any State that does not enact and enforce a conforming 0.08 BAC law will be subject to the withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if any State has not enacted and is not enforcing a conforming 0.08 BAC law by October 1, 2003, two percent of its FY 2004 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(4) shall be withheld on that date. These sections

relate to the apportionments for the National Highway System, the Surface Transportation Program and the Interstate System (including resurfacing, restoring, rehabilitating and reconstructing the interstate system). The amount withheld would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter.

**Compliance Criteria**

To avoid the withholding from apportionment of Federal-aid highway funds, a State must enact and enforce a 0.08 BAC law that meets the criteria defined in the implementing regulations for the Section 163 incentive grant program. See 64 FR 35568. To conform to the requirements of Section 163, a law must contain the following elements:

1. *Any Person*

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to all persons. The law can provide for no exceptions.

2. *Blood Alcohol Concentration (BAC) of 0.08 Percent*

A State must set a level of no more than 0.08 percent as the legal limit for blood alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

3. *Per Se Law*

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a *per se* offense of driving while intoxicated. In other words, States must establish a 0.08 “*per se*” law, that makes operating a motor vehicle with a BAC of 0.08 percent or above, in and of itself, an offense.

4. *Primary Enforcement*

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not qualify for funds under this program.

5. *Both Criminal and ALR Laws*

A State must establish a 0.08 BAC *per se* level under its *criminal code*. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must

establish an illegal 0.08 BAC *per se* level under its *ALR law*, as well.

#### 6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC *per se* law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense. That is the State's non-BAC *per se* driving while intoxicated offense in the State.

In States with multiple drinking and driving provisions, the final rule for the Section 163 incentive grant program stated that the agencies will consider a number of factors to determine whether the State's 0.08 BAC *per se* law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses. See 64 FR 35568.

A more detailed discussion of the six elements described above is contained in the interim final rule establishing the criteria for the Section 163 incentive grant program. See 63 FR at 46883–84.

During the agency's administration of the Section 163 incentive grant program, we have considered a number of proposed laws to determine whether a State's proposed 0.08 BAC offense was equivalent to the State's standard driving while intoxicated offense. In some reviews, these proposed laws were determined to be equivalent and in others they were determined not to be equivalent. Two examples are described below.

#### A. Rhode Island

Following our review of Rhode Island's new 0.08 BAC law (enacted in 2000), we concluded that the law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or equivalent to that offense in the State. Moreover, we determined that the Rhode Island law did not apply the 0.08 BAC legal limit to the State's criminal code.

Previously, Rhode Island's law provided that a person convicted of driving while intoxicated (with a BAC of 0.10 or more) had committed a misdemeanor and was subject to a fine of \$100–\$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year. Such person was subject also to a driver's license suspension of three to six months.

Rhode Island's new law creates a three-tiered penalty scheme that distinguishes between offenders with BACs of: (1) 0.08–0.09; (2) 0.10–0.14

and (3) 0.15 and above. Under the new law, a person convicted of driving while intoxicated with a BAC of 0.08 or 0.09 may receive the following sanctions: a fine of \$100–\$250; 10–60 hours of public community restitution; a special driving course; and suspension of their driver's license up to 45 days. Moreover, the new law treats a first time violation to the 0.08 offense only as a civil violation.

However, under Rhode Island's new law, a person convicted of driving while intoxicated with a BAC of 0.10–0.14 is subject to a fine of \$100–\$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year, and suspension of their driver's license for 3 to 6 months. Likewise, persons convicted of driving while intoxicated with a BAC level of 0.15 or more, would receive increased penalties of a fine of \$500, 20–60 hours of public community restitution, imprisonment up to one year, and suspension of their driver's license for 3–6 months. Thus, the agency concluded that Rhode Island's new law subjected 0.08 offenders to less severe sanctions than those imposed on 0.10 offenders; and contained sanctions that were permissive, and not mandatory, as required by Section 163 and the agency's implementing regulations. In addition, violations to the 0.08 offense were only civil offenses and violations to the 0.10 offense were criminal. Accordingly, the agency determined that Rhode Island's law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or an equivalent offense.

#### B. Alaska

Following our review of Alaska's new law (enacted in 2001), the agency concluded that the 0.08 law was equivalent to the standard driving while intoxicated offense in the State.

Previously, Alaska's law provided that a person committed the crime of driving while intoxicated if the person operated or drove a motor vehicle while they were under the influence of intoxicating liquor or if a chemical test revealed a BAC of 0.10 or more (within four hours after the alleged offense). This offense was a Class A misdemeanor and was subject to at least 72 hours of imprisonment and a fine of not less than \$250.

Under Alaska's new law, people commit the crime of driving while intoxicated if they operate or drive a motor vehicle while they are under the influence of intoxicating liquor or if a chemical test reveals a BAC of 0.08 or more (within four hours after the alleged offense). This offense is a Class A

misdemeanor and is subject to not less than 72 hours of imprisonment and a fine of not less than \$250.

In summary, Alaska's new 0.08 law retained the same penalties as those previously imposed on the State's 0.10 law. Indeed, the new law merely changed the State's legal limit from 0.10 to 0.08 BAC. Accordingly, the agency concluded that Alaska's new 0.08 BAC offense was equivalent to the standard driving while intoxicated offense in the State.

#### Demonstrating Compliance

##### A. Sanction Program

Section 351 provides that funds will be withheld from apportionment from noncomplying States beginning in FY 2004. To avoid the withholding, each State would be required by this proposed regulation to submit a certification. Under the agencies' proposal, States would be required to submit their certifications on or before September 30, 2003, to avoid the withholding from apportionment of FY 2004 funds on October 1, 2003. The agencies propose to permit (and strongly encourage) States to submit certifications in advance.

States that are found in noncompliance with these requirements in any fiscal year would be required to submit a certification to avoid the withholding of funds from apportionment in the following fiscal year. To avoid the withholding in that fiscal year, these States would be required to submit a certification demonstrating compliance before the last day (September 30) of the previous fiscal year.

Certifications submitted under this part would provide agencies with the basis for finding States in compliance with the Section 351 requirements. The agencies are proposing that the certification must consist of: (1) A statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. § 163 and 23 CFR Part 1225; and (2) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

Once a State is determined by the agencies to be in compliance with the requirements of Section 163, the agencies propose that the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed. This proposal specifies that it would be the

responsibility of the States to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

#### B. Incentive Grant Program

In this notice, the agencies propose to simplify the certification process for the incentive grant program. States that are receiving their first grant under the incentive grant program, must submit a certification consisting of: (1) A statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR Part 1225; (2) a statement that the funds received by the State under this program will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs; and (3) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

To receive subsequent-year grants under this program, a State must submit a certification consisting of: (1) A statement from an appropriate State official, stating either that the State either has amended or has not changed its 0.08 BAC *per se* law; (2) a statement that the State is enforcing the law; and (3) a statement that the funds received by the State under this program will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs. Citations to the States' laws will not be required for subsequent-year certifications.

For all States in compliance with the requirements of Section 163 in FY 2003, certifications submitted for the incentive grant program will apply toward avoiding the withholding of apportionment funds in FY 2004. No further certification is necessary from these States. To qualify for an incentive grant in any fiscal year, the regulations would continue to provide that the certifications must be received by July 15.

#### Certification Requirements

As stated previously, under the agencies' proposal, States would be required to submit a conforming certification on or before July 15, to receive an incentive grant in a fiscal year; and on or before September 30, to avoid the withholding of funds in a fiscal year.

#### Advance Notice of Apportionments Under the Sanction Program

To avoid a sanction beginning in FY 2004, the agencies propose that States would be required to enact and make effective a conforming 0.08 BAC law and submit a conforming certification on or before the last day (September 30) of the previous fiscal year.

However, NHTSA and the FHWA expect that States will want to know well in advance of the September 30 deadline whether their laws meet the requirements of Section 163 and its implementing regulations. Accordingly, the agencies encourage States to submit their laws for review as quickly as they can. More importantly, the agencies encourage States that are considering proposed 0.08 BAC legislation to request reviews from the agencies while the legislation is still pending. The agencies will review the legislation and determine whether it would conform to the Federal requirements if enacted without change, thus avoiding a situation whereby a State unintentionally enacts a non-conforming 0.08 BAC law and then is unable to meet the Section 163 requirements. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

To ensure that the States are advised of their status under the Section 163 program well in advance of any withholding, the agencies propose to notify States of their compliance or non-compliance with the requirements of Section 163 through FHWA's normal certification of apportionments process. Under this process, States are advised in advance of the amount of funds expected to be withheld from their apportionments in the upcoming fiscal year. The advance notice normally is issued not later than ninety days prior to the date on which the funds are to be apportioned. (Since funds normally are apportioned on October 1 of each year, the advance notice ordinarily is issued on or about July 1 of each year.)

Under the agencies' proposal, if the agencies have not received a law and certification from a State and determined that they conform with the requirements of Section 163 and its implementing regulations before June 15, the agencies would make an initial determination that the State is in non-compliance with Section 163, and the State would be advised in FHWA's advance notice of apportionments of the amount of funds expected to be withheld from the State in the following fiscal year.

Accordingly, if States wish to avoid receiving an advance notice of apportionments, based on an initial determination that the State is in non-compliance with Section 163, the State should submit a conforming law and certification to the agencies well in advance of June 30.

Each State that receives an advance notice of non-compliance with the requirements of Section 163 will have an opportunity to rebut the agencies' initial determination. In addition, these States will be notified of the agencies' final determination of compliance or non-compliance as part of the final notice of apportionments (which normally is issued on October 1 of each year).

#### Period of Availability for Funds

Section 351 provides an incremental approach to the withholding of funds from apportionment for noncompliance. If a State is found to be in noncompliance on October 1, 2003, the State would be subject to a two percent withholding of its FY 2004 apportionment on that date. If a State is found to be in noncompliance on October 1 of any subsequent fiscal year, the withholding percentage would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter. See Table 2.

In addition, if a State comes into compliance with the requirements of Section 163 on or before September 30, 2007, the funds withheld from apportionment would be restored to the State. Specifically, Section 351 provides that, "If within four years from the date that the apportionment for any State is reduced in accordance with this section the Secretary determines that such State has enacted and is enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, the apportionment of such State shall be increased by an amount equal to such reduction."

However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State will begin to lapse and will no longer be available for apportionment. Section 351 provides that, "If at the end of such four-year period, any State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code, any amounts so withheld shall lapse."

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004 .....	2	
2005 .....	4	
2006 .....	6	
2007 .....	8	
2008 .....	8	2% withheld in FY04.
2009 .....	8	4% withheld in FY05.
2010 .....	8	6% withheld in FY06.
2011 .....	8	8% withheld in FY07.
2012 .....	8	8% withheld in FY08.

### Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. See 49 CFR 553.21. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA-01-XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

(2) By hand delivery to: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493-2251; or

(4) By electronic submission: log onto the DMS website at <http://dms.dot.gov> and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday. You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS web page at <http://dms.dot.gov/search/>.

(2) On that page, click on "search".

(3) On the next page (<http://dms.dot.gov/search/>) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

### Regulatory Analyses and Notices

#### *Executive Order 12988 (Civil Justice Reform)*

This proposed rule would not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures and determined that it is "significant" because it involves the withholding of Federal-aid highway funds to any State that has not enacted and is not enforcing a 0.08 BAC law by FY 2004, a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this proposed rule could total from \$100 million to \$400 million. See NHTSA, Preliminary Regulatory Evaluation, 0.08 Sanction Program 20. Thus, this rulemaking could be economically significant under Executive Order 12866, *i.e.*, have an annual effect on the economy of \$100 million or more. Accordingly, a preliminary regulatory evaluation has been prepared to review costs and benefits imposed on States to enact a 0.08 BAC law. The preliminary regulatory evaluation has been placed in the docket for this proposed rule.

The preamble to this rulemaking indicates that the adoption of 0.08 BAC laws could save 590 lives each year. This "benefit" is based upon a research study published in 1999 that measured the effects of 0.08 BAC laws by reviewing the fatality numbers in States with conforming 0.08 BAC laws at the time this study was conducted (15 States). This study concluded that 0.08 BAC laws might reduce alcohol-related fatalities by approximately 8 percent.

The preliminary regulatory evaluation uses a slightly different measure to determine the "benefit" of adoption of 0.08 BAC laws. As explained in more detail below, the "benefit" was determined in the preliminary regulatory evaluation by measuring the fatality numbers for the States that had not enacted conforming 0.08 BAC laws before the creation of the 0.08 sanction program in October 2000 (32 States), using an estimate that 0.08 BAC laws might reduce alcohol-related fatalities by 7 percent. This estimate was derived from a recent Center for Disease Control (CDC)-sponsored independent task force study, which calculated 7 percent as the median effectiveness percentage for 0.08 BAC laws. Using these measures, the preliminary regulatory evaluation concludes that 616 lives (are being/ could be) saved each year by the adoption of 0.08 BAC laws. See Preliminary Regulatory Evaluation, *supra*, at 1.

#### A. Benefits

The preliminary regulatory evaluation concludes that changing the level of

alcohol from 0.10 to 0.08 in State *per se* laws will result in fewer alcohol-related traffic crashes and fatalities. Specifically, the preliminary regulatory evaluation cites a review performed by a CDC-sponsored independent task force, to support the conclusion that 0.08 BAC laws may reduce alcohol-related fatalities by 7 percent each year. This 7 percent reduction could annually prevent 616 fatalities, over 13,800 non-fatal injuries, and over 50,000 damaged vehicles involved in over 30,000 property-damage only (PDO) crashes. See Preliminary Regulatory Evaluation, *supra*, at 23.

#### B. Costs

The regulatory evaluation concludes that the impact of 0.08 BAC laws will depend on drinking drivers' perceptions that they are more likely to be caught over the limit, and thereby reduce the amount they drink before driving. To successfully accomplish this goal, States will develop public information campaigns, both at the time of legislative debate to inform the public of the need for the law and later during enforcement and prosecution of the law to help achieve compliance. Typically, States will use unpaid media exposure, such as news stories and public service messages, however, some States will implement public information campaigns that involve paying for airtime on radio and television and/or advertising space in print media and billboards. Both approaches would require the time of State and local workers, especially in the State Highway Safety Office, to develop and manage these public information programs.

To mitigate costs incurred in educating the public, States may use Federal highway safety grant funds to pay for the development of public information programs and for airtime and print advertising space. In addition, NHTSA provides sample press release kits to aid communities in publicizing new programs through newspapers, TV and radio.

Aside from advertising costs, the preliminary regulatory evaluation expects that the costs for implementing this proposed rule will be minimal and consist of changes that States make as a matter of course when amending a State law (e.g., updating driver handbooks and forms).

#### C. Conclusion

The preliminary regulatory evaluation notes that it is difficult to measure the effects of 0.08 BAC laws. This difficulty arises because impaired-driving laws are often passed concurrently or within the

same year. In addition, the degree of the law's enforcement, and especially the publicity surrounding that enforcement, can vary significantly and such variability can influence the law's effectiveness. Nonetheless, the preliminary regulatory evaluation concludes that 616 lives (are being/ could be) saved each year by the adoption of 0.08 BAC laws.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have passed 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range. See Preliminary Regulatory Evaluation, *supra*, at 21.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as \$28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 17 States affected, only 16 percent of all State highway expenditures. Accordingly, even if the sanction was imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States

would be within a range of only 0.77 percent (in Massachusetts) to 3.62 percent (in Montana). Further, most of these businesses do not rely totally on highway construction contracts for their revenue. Based on these considerations, the preliminary regulatory evaluation finds that this action would not result in a significant impact on the small businesses involved. See Preliminary Regulatory Evaluation, *supra*, at 21.

#### *Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

#### *National Environmental Policy Act*

The agencies have analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that it would not have any significant impact on the quality of the human environment.

#### *The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the \$100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

#### *Executive Order 13132 (Federalism)*

Executive Order 13132 requires the agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, the agency may not issue a regulation with

Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agencies also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal may have Federal implications. We intend to consult with State and local officials about this proposal, and we will include a Federalism summary impact statement in the preamble to the final rule. NHTSA seeks comments on the federalism impact of this proposal.

*Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

The agencies have analyzed this proposed rule under Executive Order 13175, and believe that the proposed action would not have a substantial direct effect on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

**List of Subjects in 23 CFR Part 1225**

Alcohol and alcoholic beverages, Transportation, Highway safety.

In consideration of the foregoing, the agencies propose to revise 23 CFR part 1225 as follows:

**PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS**

- Sec.  
1225.1 Scope.  
1225.2 Purpose.

- 1225.3 Definitions  
1225.4 Adoption of 0.08 BAC *per se* law.  
1225.5 General requirements for incentive grant program.  
1225.6 Award procedures for incentive grant program.  
1225.7 Certification requirements for sanction program.  
1225.8 Funds withheld from apportionment.  
1225.9 Period of availability of withheld funds.  
1225.10 Apportionment of withheld funds after compliance.  
1225.11 Notification of compliance.  
1225.12 Procedures affecting states in noncompliance.  
Appendix A To Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

**Authority:** 23 U.S.C. 163; sec. 351, Pub. L. 106–346—Appendix, 114 Stat. 1356A–34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

**§ 1225.1 Scope.**

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and section 351 of Public Law 106–346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

**§ 1225.2 Purpose.**

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106–346—Appendix.

**§ 1225.3 Definitions.**

As used in this part:

- (a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.  
(b) *ALR* means either administrative license revocation or administrative license suspension.  
(c) *BAC* means either blood or breath alcohol concentration.  
(d) *BAC per se* law means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.  
(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

**§ 1225.4 Adoption of 0.08 BAC per se law.**

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

- (a) Apply to all persons;  
(b) Set a BAC of not higher than 0.08 percent as the legal limit;  
(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;  
(d) Provide for primary enforcement;  
(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and  
(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

**§ 1225.5 General requirements for incentive grant program.**

(a) *Certification requirements.*

(1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible



for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_, under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the

certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) *Limitation on grants.* A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

#### **§ 1225.6 Award procedures for incentive grant program.**

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds are subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA-21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects.

#### **§ 1225.7 Certification requirements for sanction program.**

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the

previous fiscal year, that it meets all of the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225. The certifying statement should be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_, has enacted and is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's 0.08 BAC *per se* law changes.

(e) FY 2003 Certifications.

(1) Any State that submits a certification of compliance in conformance with the requirements of 23 U.S.C. 163 on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program. No further certification is necessary from these States.

(2) Any State that submits a certification of compliance in conformance with the requirements of 23 U.S.C. 163 between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004. No further certification is necessary from these States.

#### **§ 1225.8 Funds withheld from apportionment.**

(a) Beginning in fiscal year 2004, the Secretary shall withhold two percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United

States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold four percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold six percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold eight percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

**§ 1225.9 Period of availability of withheld funds.**

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within four years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part.

**§ 1225.10 Apportionment of withheld funds after compliance.**

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

**§ 1225.11 Notification of compliance.**

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

**§ 1225.12 Procedures affecting states in noncompliance.**

(a) Each fiscal year, beginning with FY 2004, based on a preliminary review of certifications received, States that are determined to be in noncompliance with 23 U.S.C. 163 and this part, will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

**Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States**

**EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES**

Fiscal year	Withhold (percent)	Lapse (percent)
2004 .....	2	
2005 .....	4	
2006 .....	6	
2007 .....	8	
2008 .....	8	2% withheld in FY04.
2009 .....	8	4% withheld in FY05.
2010 .....	8	6% withheld in FY06.
2011 .....	8	8% withheld in FY07.
2012 .....	8	8% withheld in FY08.

Issued on: January 31, 2003.

**Mary E. Peters,**  
*Administrator, Federal Highway Administration.*

**Jeffrey W. Runge,**  
*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 03-2790 Filed 2-5-03; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD05-02-065]**

**RIN 2115-AE47**

**Drawbridge Operation Regulations; Raccoon Creek, NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. The proposed rule would increase openings and eliminate the need for a bridge tender by allowing the bridge to be operated by a train crewmember. This change will provide for the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before April 7, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398-6222. The Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting